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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/730,364

Applicant(s)

MORMAN ET AL.

Examiner

PAULA L. CRAIG

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 10-12,15,20-24 and 26-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9,13,14,16-19 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/888)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed March 7, 2008 have been considered but are moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 1-4, 6, 8-9, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,846,232 to Serbiak et al.
4. For Claim 1, Serbiak teaches an absorbent article including a chassis having a front waist region, a back waist region, and a crotch region extending between the front and back waist regions (Abstract, Figs. 1-9, col. 1, lines 6-10, col. 5, lines 62-67, col. 6,

lines 1-10, Claim 1). An outer cover member 22 extends longitudinally between the front and back waist regions (Figs. 1-9, col. 6, lines 1-23, Claim 1). A bodyside liner 24 extends longitudinally between the front and back waist regions (Figs. 1-9, col. 6, lines 1-23, Claim 1). Serbiak teaches a non-extensible absorbent body structure 36 sandwiched between the outer cover member and the bodyside liner (Figs. 1-9, col. 7, line 39 to col. 8, line 26, col. 10, lines 12-15, Claim 3). The bodyside liner 24 includes a material having an untensioned and ungathered, inherently extensible base layer of a fluid permeable material, the base layer extendable to at least about 125% of its original dimension in a first direction essentially without fracture of the base layer material (Figs. 1-9, col. 1, lines 45-60, col. 2, lines 17-34, col. 3, lines 60-66, col. 4, lines 50-60, col. 6, lines 44-67, col. 7, lines 1-10, col. 10, lines 37-48, col. 11, lines 8-63, Claims 1, 4, 23; note that Serbiak indicates that the same materials can be used for the bodyside liner 24 and the outer cover layer 22; note that bodyside liner 24 is described as coexisting with elastic layer 28 in an unstressed and untensioned condition). Serbiak teaches at least a first and a second strip of substantially untensioned elastomeric material wholly disposed on and attached to the base layer material to form flat planar composite regions with a space between the strips such that a center untensioned region of the base layer material is bordered on at least two longitudinally extending sides by the composite regions of the elastomeric materials and the base layer material, with the center region generally disposed over the absorbent body structure (first and second strips include elastic layer 28; center region includes the crosshatched area of absorbent core 36; Figs. 1, 3-6 and 8; col. 2, lines 42-47, col. 6, lines 24-31, col. 7, lines

11-38, col. 8, lines 37-31, col. 9, lines 18-23; Claims 10, 17, 23, 35; note that Serbiak teaches that the elastic layer 28 can be disposed where the extensible zones 30-30D are and does not need to extend over a greater area; the extensible zones are indicated in the figures by circles). Serbiak teaches the center region of untensioned base layer material being bonded to the immediately underlying portion of the absorbent body structure in registry with the center region of untensioned base layer material in its untensioned condition (base layer material includes bodyside liner layer 24; center region includes the crosshatched area of absorbent core 36; Figs. 1, 3-6 and 8, col. 6, lines 10-13, col. 8, lines 8-26, col. 9, lines 24-36, col. 10, lines 12-15, Claims 1, 3, 12, 17, 31; note that Serbiak teaches that the absorbent core 36 is fixed to the base structure 26; the base structure is made up of the outer cover layer 22 and the bodyside liner layer 24). The description in Serbiak that the absorbent core 36 is fixedly attached to the base structure 26, and that the base structure is made up of the outer cover layer 22 and the bodyside liner layer 24, with the result that the base structure is not extensible over the area controlled by the attachment, suggests that the base layer material is directly bonded to the absorbent body structure (base layer material includes bodyside liner layer 24; center region includes the crosshatched area of absorbent core 36; Figs. 1, 3-6 and 8, col. 6, lines 10-13, col. 8, lines 8-26, col. 10, lines 12-15, Claims 1, 3, 12, 17, 31). Serbiak teaches the composite regions being stretchable in at least a second direction of the absorbent article (composite regions include elastic layer 28 in extensible zones 30-30D; Figs. 1, 3-6, and 8; col. 1, lines 39-67, col. 2, lines 17-42, col. 4, lines 50-65, col. 5, lines 45-47, col. 6, lines 1-10, col. 8, lines 26-48, col. 10, line 48 to

col. 11, line 26, Claims 1 and 9). Serbiak does not expressly teach the center region of untensioned base layer material being bonded directly to the immediately underlying portion of the absorbent body structure. In light of Serbiak's teaching that the absorbent body structure is fixedly attached to a structure which includes the base layer material, it would have been obvious to one of ordinary skill in the art to modify Serbiak to include the center region of the base layer material being bonded directly to the immediately underlying portion of the absorbent body structure.

5. For Claim 25, Serbiak teaches an absorbent article including a chassis having a front waist region, a back waist region, and a crotch region extending between the front and back waist regions (Abstract, Figs. 1-9, col. 1, lines 6-10, col. 5, lines 62-67, col. 6, lines 1-10, Claim 1). An outer cover member 22 extends longitudinally between the front and back waist regions (Figs. 1-9, col. 6, lines 1-23, Claim 1). A bodyside liner 24 extends longitudinally between the front and back waist regions (Figs. 1-9, col. 6, lines 1-23, Claim 1). Serbiak teaches a non-extensible absorbent body structure 36 sandwiched between the outer cover member and the bodyside liner (Figs. 1-9, col. 7, line 39 to col. 8, line 26, col. 10, lines 12-15, Claim 3). The bodyside liner 24 includes a material having an untensioned and ungathered, inherently extensible base layer of a fluid permeable material, the base layer extendable to at least about 125% of its original dimension in a first direction essentially without fracture of the base layer material (Figs. 1-9, col. 1, lines 45-60, col. 2, lines 17-34, col. 3, lines 60-66, col. 4, lines 50-60, col. 6, lines 44-67, col. 7, lines 1-10, col. 10, lines 37-48, col. 11, lines 8-63, Claims 1, 4, 23; note that Serbiak indicates that the same materials can be used for the bodyside liner

24 and the outer cover layer 22; note that bodyside liner 24 is described as coexisting with elastic layer 28 in an unstressed and untensioned condition). Serbiak teaches a strip of substantially untensioned elastomeric material attached to the base layer material along a longitudinally extending side thereof to form a flat planar composite region, and such that a first region of the base layer material is adjacent a composite region of the elastomeric material and the base layer material, the first region of base layer material that is adjacent the composite region being generally wholly disposed on and bonded to the absorbent body structure (strip includes elastic layer 28; first region includes the crosshatched area of absorbent core 36; Figs. 1, 3-6 and 8; col. 2, lines 42-47, col. 6, lines 24-31, col. 7, lines 11-38, col. 8, lines 37-31, col. 9, lines 18-23; Claims 10, 17, 23, 35; note that Serbiak teaches that the elastic layer 28 can be disposed where the extensible zones 30-30D are and does not need to extend over a greater area; the extensible zones are indicated in the figures by circles). Serbiak teaches the first region of base layer material being bonded to the immediately underlying portion of the absorbent body structure in registry with the first region of base layer material in its untensioned condition (base layer material includes bodyside liner layer 24; first region includes the crosshatched area of absorbent core 36; Figs. 1, 3-6 and 8, col. 6, lines 10-13, col. 8, lines 8-26, col. 9, lines 24-36, col. 10, lines 12-15, Claims 1, 3, 12, 17, 31; note that Serbiak teaches that the absorbent core 36 is fixed to the base structure 26; the base structure is made up of the outer cover layer 22 and the bodyside liner layer 24). The description in Serbiak that the absorbent core 36 is fixedly attached to the base structure 26, and that the base structure is made up of the outer cover layer 22

and the bodyside liner layer 24, with the result that the base structure is not extensible over the area controlled by the attachment, suggests that the base layer material is directly bonded to the absorbent body structure (base layer material includes bodyside liner layer 24; first region includes the crosshatched area of absorbent core 36; Figs. 1, 3-6 and 8, col. 6, lines 10-13, col. 8, lines 8-26, col. 10, lines 12-15, Claims 1, 3, 12, 17, 31). Serbiak teaches the composite region being stretchable in at least a transverse direction of the absorbent article (composite regions include elastic layer 28 in extensible zones 30-30D; Figs. 1, 3-6, and 8; col. 1, lines 39-67, col. 2, lines 17-42, col. 4, lines 50-65, col. 5, lines 45-47, col. 6, lines 1-10, col. 8, lines 26-48, col. 10, line 48 to col. 11, line 26, Claims 1 and 9). Serbiak does not expressly teach the first region of base layer material being bonded directly to the immediately underlying portion of the absorbent body structure. In light of Serbiak's teaching that the absorbent body structure is fixedly attached to a structure which includes the base layer material, it would have been obvious to one of ordinary skill in the art to modify Serbiak to include the first region of the base layer material being bonded directly to the immediately underlying portion of the absorbent body structure.

6. For Claim 2, Serbiak teaches the article being a training pant, diaper, or incontinence article (col. 5, lines 62-67).

7. For Claim 3, Serbiak teaches the base layer material defining a pair of opposed lateral side edges, each of the first and second elastomeric strips defining a lateral side edge that is aligned with one of the lateral edges of the base layer material (base layer

material includes bodyside liner layer 24; elastomeric strips include elastic layer 28 in extensible zones 30-30D; Figs. 1, 3-6, and 8; col. 6, lines 24-31).

8. For Claim 4, Serbiak teaches the base layer material 24 including a non-woven material (col. 6, lines 44-67, col. 7, lines 1-10; note the same materials can be used for the outer cover layer 22 and the bodyside liner layer 24).

9. For Claim 6, Serbiak teaches the first and second elastomeric materials including an elastic film, the films being laminated to the base layer material (elastomeric strips include elastic layer 28 in extensible zones 30-30D; Figs. 1, 3-6, and 8; Abstract, col. 7, lines 11-39).

10. For Claim 8, Serbiak teaches that the elastomeric materials are attached to the base layer material in a generally untensioned state (col. 1, lines 55-60, col. 3, lines 53-66, col. 7, lines 22-38, col. 10, lines 38-58, Claim 1).

11. For Claim 9, Serbiak teaches elastomeric materials which are fully capable of being attached to the base layer material in a generally tensioned state (elastic layer 28 can be placed in a state of tension while attached to the base layer material by extending the material; Figs. 1-9, col. 7, lines 11-36).

12. Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Serbiak in view of Krautkramer (US 6,231,557).

13. For Claim 5, Serbiak teaches all the limitations of Claim 4, as described above in paragraph 8. Serbiak teaches the base layer material 24 including a nonwoven material which includes a spunbond material (col. 6, lines 44-67, col. 7, lines 1-10; note the

same materials can be used for the outer cover layer 22 and the bodyside liner layer 24). Serbiak does not teach the spunbond material being a bicomponent spunbond material. However, bicomponent spunbond materials are well known in the art. Krautkramer confirms this and teaches a bodyside liner which is a bicomponent spunbond material (col. 41, line 62 to col. 44, line 29). In light of Serbiak's teaching of a spunbond material, it would have been obvious to one of ordinary skill in the art to modify Serbiak to include the spunbond material being a bicomponent spunbond material, as taught by Krautkramer.

14. For Claim 7, Serbiak teaches the first and second elastomeric materials including elastomeric fibers (strands of elastic material, Abstract, col. 7, lines 11-21). Serbiak does not expressly teach the strands of elastic material forming webs. However, webs of elastic material are well known in the art. Krautkramer confirms this and teaches elastomeric materials including webs of elastomeric fibers (col. 23, lines 24-55). In light of Serbiak's teaching of strands of elastic material, it would have been obvious to one of ordinary skill in the art to modify Serbiak to include webs of elastomeric fibers, as taught by Krautkramer.

15. Claims 13-14 and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Serbiak in view of Popp (US 2002/0087139).

16. For Claim 13, Serbiak teaches all the limitations of Claim 1, as described above in paragraph 4. Serbiak teaches the composite regions of the bodyside liner defining composite strips extending laterally from the center region (composite strips include the

elastic layer 28 of extensible zones 30-30D, Figs. 1, 3-6, and 8; col. 2, lines 42-47, col. 6, lines 24-31, col. 7, lines 11-38, Claims 1 and 10). Serbiak does not teach each of the strips being folded to form a folded composite region at a side fold line of the chassis. Applicant's specification does not disclose that this folded configuration serves any stated purpose or solves any particular problem. In addition, this feature is well known in the art. Popp confirms this and teaches elasticized composite strips of the bodyside liner being folded at a side fold line of the chassis, extending laterally from the fold line toward the center region with a portion above and below the absorbent body structure, and being attached to each other such that the composite regions also define an outer cover member of the chassis (Abstract, Figs. 1-4, paragraphs 50-51, 63, 69-70). Popp teaches that this configuration creates a bucket for containing body fluids, with a soft and comfortable leg and side seal (paragraphs 7-8). It would have been obvious to one of ordinary skill in the art at the time of the invention by the Applicant to modify Serbiak to include each of the composite regions being folded to form a folded composite region at a respective opposite side fold line of the chassis, extending laterally from the fold line toward the center region with a portion above and below the absorbent body structure, and being attached to each other such that the folded composite regions also define the outer cover member of the chassis, as taught by Popp, to create a bucket for containing body fluids, with a soft and comfortable leg and side seal, as taught by Popp.

17. For Claim 14, Serbiak teaches leg elastics 40 (Figs. 1-9, col. 8, lines 30-48, Claim 38). Serbiak does not teach leg elastics between folded composite regions of the bodyside liner. Applicant's specification does not disclose that leg elastics between

folded composite regions of the bodyside liner serve any stated purpose or solve any particular problem. Popp teaches leg elastics between folded portions of the bodyside liner (Abstract, Figs. 1-4, paragraphs 48-51, 63, 69-70). Popp teaches that this configuration creates a bucket for containing body fluids, with a soft and comfortable leg and side seal (paragraphs 7-8). It would have been obvious to one of ordinary skill in the art at the time of the invention by the Applicant to modify Serbiak to include leg elastics between folded portions of the bodyside liner, as taught by Popp, to create a bucket for containing body fluids, with a soft and comfortable leg and side seal, as taught by Popp.

18. For Claim 16, Serbiak does not teach portions of the composite regions of the bodyside liner being folded outboard of the absorbent body structure so as to define containment flaps. Applicant's specification does not disclose that using folded composite regions of the bodyside liner as the containment flaps serves any stated purpose or solves any particular problem. In addition, the bodyside liner being folded outboard of the absorbent body structure to define containment flaps is well known in the art. Popp confirms this and teaches portions of the bodyside liner being folded outboard of the absorbent body structure so as to define containment flaps (Abstract, Figs. 1-4, paragraphs 48-51, 63, 69-70). Popp teaches that this configuration creates a bucket for containing body fluids, with a soft and comfortable leg and side seal (paragraphs 7-8). It would have been obvious to one of ordinary skill in the art at the time of the invention by the Applicant to modify Serbiak to include the bodyside liner being folded outboard of the absorbent body structure to define containment flaps, as

taught by Popp, to create a bucket for containing body fluids, with a soft and comfortable leg and side seal, as taught by Popp.

19. For Claim 17, Serbiak teaches the composite regions being attached to the absorbent body structure (Figs. 1, 3-6, and 8; col. 8, lines 17-26, col. 9, lines 24-36, col. 10, lines 6-15, Claims 3, 12, 31).

20. For Claim 18, Serbiak teaches the composite regions of the bodyside liner defining longitudinal composite strips extending outwardly from the center region and defining elastomeric side panels that are attached at side seams of the chassis to define a pant-like structure (Figs. 1, 3-6, and 8, col. 6, lines 32-43, col. 12, lines 30-39, Claim 32; attachment elements 32 attach the side seams). Serbiak does not teach the longitudinal composite strips being folded outboard of the side panels at fold lines and extending laterally back under the absorbent body structure and attached to each other such that the composite regions also define the outer cover member of the chassis. Applicant's specification does not disclose that folding strips of the bodyside liner, extending them laterally back under the absorbent body structure, and attaching them to each other as the outer cover member serves any stated purpose or solves any particular problem. In addition, the bodyside liner being folded outboard of the side panels at fold lines and extending laterally back under the absorbent body structure, attached to each other such that the bodyside liner also defines at least part of the outer cover member of the chassis, is well known in the art. Popp confirms this and teaches the bodyside liner being folded outboard of the side panels at fold lines and extending laterally back under the absorbent body structure, attached to each other such that the

bodyside liner also defines at least part of the outer cover member of the chassis (Abstract, Figs. 1-4, paragraphs 48-51, 63, 69-70). Popp teaches that this configuration creates a bucket for containing body fluids, with a soft and comfortable leg and side seal (paragraphs 7-8). It would have been obvious to one of ordinary skill in the art at the time of the invention by the Applicant to modify Serbiak to include the bodyside liner being folded outboard of the side panels at fold lines and extending laterally back under the absorbent body structure, attached to each other such that the bodyside liner also defines at least part of the outer cover member of the chassis, as taught by Popp, to create a bucket for containing body fluids, with a soft and comfortable leg and side seal, as taught by Popp.

21. For Claim 19, Serbiak teaches the article being a child's training pant (col. 5, lines 62-67).

Conclusion

22. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAULA L. CRAIG whose telephone number is (571)272-5964. The examiner can normally be reached on M-F 8:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paula L Craig
Examiner
Art Unit 3761

Art Unit: 3761

/P. L. C./

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761